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21 SOUTHERN GLAZER'S WINE AND SPIRITS,
22 LLC

23 UNITED STATES DISTRICT COURT
24 CENTRAL DISTRICT OF CALIFORNIA

25 SCOTT CARNES,

26 Plaintiff,

27 v.

28 SOUTHERN GLAZER'S WINE AND
SPIRITS, LLC, AND DOES 1-20,

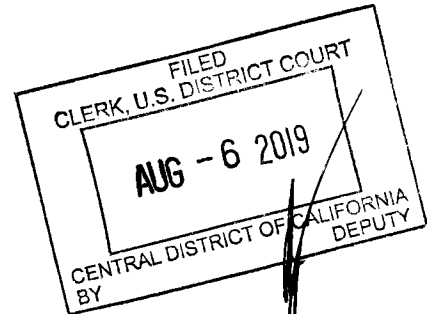
Defendants.

Case No. 2:19-cv-00255 MWF (FFMx)

**PROTECTIVE ORDER PURSUANT
TO STIPULATION**

[DISCOVERY MATTER]

(Complaint Filed in Los Angeles County
Superior Court on November 13, 2018,
Case No. 18STCV04631)



1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection
8 it affords from public disclosure and use extends only to the limited information or items
9 that are entitled to confidential treatment under the applicable legal principles. The
10 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
11 Protective Order does not entitle them to file confidential information under seal; Civil
12 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
13 will be applied when a party seeks permission from the court to file material under seal.

14 B. GOOD CAUSE STATEMENT

15 This action is likely to involve private personal information related to the
16 Plaintiff, as well as confidential and proprietary company information and documents,
17 and private personal, financial and business information related to Southern Glazer's
18 Wine and Spirits, LLC, and its employees and customers for which special protection
19 from public disclosure and from use for any purpose other than prosecution of this
20 action is warranted. Such material and information consists of, among other things,
21 private personal information, financial statements, customer and employee information

1 used in connection with a reduction in force, internal company policies, procedures,
2 agreements, and training material, internal business emails including emails regarding
3 potentials profits, losses, and agreements with third-parties, third-party information
4 including personal contact information, and business proposals and contracts, that are
5 generally unavailable to the public, or which may be privileged or otherwise protected
6 from disclosure under applicable state or federal statutes, court rules, case decisions, or
7 common law. Accordingly, to expedite the flow of information, to facilitate the prompt
8 resolution of disputes over confidentiality of discovery materials, to adequately protect
9 information the parties are entitled to keep confidential, to ensure that the parties are
10 permitted reasonable necessary uses of such material in preparation for and in the
11 conduct of trial, to address their handling at the end of the litigation, and serve the ends
12 of justice, a protective order for such information is justified in this matter. It is the
13 intent of the parties that information will not be designated as confidential for tactical
14 reasons and that nothing be so designated without a good faith belief that it has been
15 maintained in a confidential, non-public manner, and there is good cause why it should
16 not be part of the public record of this case.

22 **2. DEFINITIONS**

24 2.1 Action: *Scott Carnes v. Southern Glazer's Wine and Spirits, LLC*, U.S.
25 District Court No. 2:19-cv-00255 MWF (FFMx).

27 2.2 Challenging Party: a Party or Non-Party that challenges the designation
28 of information or items under this Order.

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
2 it is generated, stored or maintained) or tangible things that qualify for protection under
3 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
4 Statement.
5

6 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
7 support staff).
8

9 2.5 Designating Party: a Party or Non-Party that designates information or
10 items that it produces in disclosures or in responses to discovery as
11 “CONFIDENTIAL.”
12

13 2.6 Disclosure or Discovery Material: all items or information, regardless of
14 the medium or manner in which it is generated, stored, or maintained (including, among
15 other things, testimony, transcripts, and tangible things), that are produced or generated
16 in disclosures or responses to discovery in this matter.
17

18 2.7 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
20 expert witness or as a consultant in this Action.
21

22 2.8 House Counsel: attorneys who are employees of a party to this Action.
23 House Counsel does not include Outside Counsel of Record or any other outside
24 counsel.
25

26 2.9 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.
28

1 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
2 this Action but are retained to represent or advise a party to this Action and have
3 appeared in this Action on behalf of that party or are affiliated with a law firm which
4 has appeared on behalf of that party, and includes support staff.
5

6 2.11 Party: any party to this Action, including all of its officers, directors,
7 employees, consultants, retained experts, and Outside Counsel of Record (and their
8 support staffs).
9

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.
12

13 2.13 Professional Vendors: persons or entities that provide litigation support
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
16 their employees and subcontractors.
17

18 2.14 Protected Material: any Disclosure or Discovery Material that is
19 designated as "CONFIDENTIAL."
20

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
22 from a Producing Party.
23

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected
26 Material (as defined above), but also (1) any information copied or extracted from
27
28

1 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
2 Material; and (3) any testimony, conversations, or presentations by Parties or their
3 Counsel that might reveal Protected Material.
4

5 Any use of Protected Material at trial shall be governed by the orders of the trial
6 judge. This Order does not govern the use of Protected Material at trial.
7

8 4. DURATION

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
11 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
12 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;
13 and (2) final judgment herein after the completion and exhaustion of all appeals,
14 rehearings, remands, trials, or reviews of this Action, including the time limits for filing
15 any motions or applications for extension of time pursuant to applicable law.
16
17

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

20 Each Party or Non-Party that designates information or items for protection under this
21 Order must take care to limit any such designation to specific material that qualifies
22 under the appropriate standards. The Designating Party must designate for protection
23 only those parts of material, documents, items, or oral or written communications that
24 qualify so that other portions of the material, documents, items, or communications for
25 which protection is not warranted are not swept unjustifiably within the ambit of this
26
27
28

1 Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that
3 are shown to be clearly unjustified or that have been made for an improper purpose
4 (e.g., to unnecessarily encumber the case development process or to impose
5 unnecessary expenses and burdens on other parties) may expose the Designating Party
6 to sanctions.
7

8
9 If it comes to a Designating Party's attention that information or items that it
10 designated for protection do not qualify for protection, that Designating Party must
11 promptly notify all other Parties that it is withdrawing the inapplicable designation.
12

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
14 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
15 or ordered, Disclosure or Discovery Material that qualifies for protection under this
16 Order must be clearly so designated before the material is disclosed or produced.
17

18 Designation in conformity with this Order requires:
19

20 (a) for information in documentary form (e.g., paper or electronic documents,
21 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
22 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
23 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
24 portion or portions of the material on a page qualifies for protection, the Producing Party
25 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
26 in the margins).
27
28

1 A Party or Non-Party that makes original documents available for inspection
2 need not designate them for protection until after the inspecting Party has indicated
3 which documents it would like copied and produced. During the inspection and before
4 the designation, all of the material made available for inspection shall be deemed
5 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
6 copied and produced, the Producing Party must determine which documents, or portions
7 thereof, qualify for protection under this Order. Then, before producing the specified
8 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
9 that contains Protected Material. If only a portion or portions of the material on a page
10 qualifies for protection, the Producing Party also must clearly identify the protected
11 portion(s) (e.g., by making appropriate markings in the margins).
12
13
14
15

16 (b) for testimony given in depositions that the Designating Party identify the
17 Disclosure or Discovery Material on the record, before the close of the deposition all
18 protected testimony.
19

20 (c) for information produced in some form other than documentary and for
21 any other tangible items, that the Producing Party affix in a prominent place on the
22 exterior of the container or containers in which the information is stored the legend
23 “CONFIDENTIAL.” If only a portion or portions of the information warrants
24 protection, the Producing Party, to the extent practicable, shall identify the protected
25 portion(s).
26
27

28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent

1 failure to designate qualified information or items does not, standing alone, waive the
2 Designating Party's right to secure protection under this Order for such material. Upon
3
4 timely correction of a designation, the Receiving Party must make reasonable efforts to
5 assure that the material is treated in accordance with the provisions of this Order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7
8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time that is consistent with the Court's Scheduling
10 Order.

11
12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
13 resolution process under Local Rule 37.1 et seq.

14
15 6.3 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
17 to harass or impose unnecessary expenses and burdens on other parties) may expose the
18 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
19 the confidentiality designation, all parties shall continue to afford the material in
20 question the level of protection to which it is entitled under the Producing Party's
21 designation until the Court rules on the challenge.
22
23

24 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a Non-Party in connection with this Action
27 only for prosecuting, defending, or attempting to settle this Action. Such Protected
28

1 Material may be disclosed only to the categories of persons and under the conditions
2 described in this Order. When the Action has been terminated, a Receiving Party must
3 comply with the provisions of section 13 below (FINAL DISPOSITION).

4
5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.
8

9 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
10 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
11 may disclose any information or item designated "CONFIDENTIAL" only to:
12

13 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
14 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
15 disclose the information for this Action;
16

17 (b) the officers, directors, and employees (including House Counsel) of the
18 Receiving Party to whom disclosure is reasonably necessary for this Action;
19

20 (c) Experts (as defined in this Order) of the Receiving Party to whom
21 disclosure is reasonably necessary for this Action and who have signed the
22 "Acknowledgment and Agreement to Be Bound" (Exhibit A);
23

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

26 (f) professional jury or trial consultants, mock jurors, and Professional
27 Vendors to whom disclosure is reasonably necessary for this Action and who have
28

1 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

2 (g) the author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information;

4 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
5 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
6 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
7 not be permitted to keep any confidential information unless they sign the
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed
9 by the Designating Party or ordered by the court. Pages of transcribed deposition
10 testimony or exhibits to depositions that reveal Protected Material may be separately
11 bound by the court reporter and may not be disclosed to anyone except as permitted
12 under this Stipulated Protective Order; and

13 (i) any mediator or settlement officer, and their supporting personnel,
14 mutually agreed upon by any of the parties engaged in settlement discussions.

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
16 OTHER LITIGATION

17 If a Party is served with a subpoena or a court order issued in other litigation that
18 compels disclosure of any information or items designated in this Action as
19 "CONFIDENTIAL," that Party must:

20 (a) promptly notify in writing the Designating Party. Such notification shall
21 include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena or
3 order is subject to this Protective Order. Such notification shall include a copy of this
4 Stipulated Protective Order; and

5
6 (c) cooperate with respect to all reasonable procedures sought to be pursued
7 by the Designating Party whose Protected Material may be affected.
8

9 If the Designating Party timely seeks a protective order, the Party served with the
10 subpoena or court order shall not produce any information designated in this action as
11 “CONFIDENTIAL” before a determination by the court from which the subpoena or
12 order issued, unless the Party has obtained the Designating Party’s permission. The
13 Designating Party shall bear the burden and expense of seeking protection in that court
14 of its confidential material and nothing in these provisions should be construed as
15 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
16 from another court.
17
18

19
20 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
21 IN THIS LITIGATION
22

23 (a) The terms of this Order are applicable to information produced by a Non-
24 Party in this Action and designated as “CONFIDENTIAL.” Such information produced
25 by Non-Parties in connection with this litigation is protected by the remedies and relief
26 provided by this Order. Nothing in these provisions should be construed as prohibiting
27 a Non-Party from seeking additional protections.
28

1 (b) In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's confidential information in its possession, and the Party is
3 subject to an agreement with the Non-Party not to produce the Non-Party's confidential
4 information, then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party that
7 some or all of the information requested is subject to a confidentiality agreement with
8 a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the Stipulated
11 Protective Order in this Action, the relevant discovery request(s), and a reasonably
12 specific description of the information requested; and

14 (3) make the information requested available for inspection by the Non-
15 Party, if requested.

17 (c) If the Non-Party fails to seek a protective order from this court within 14
18 days of receiving the notice and accompanying information, the Receiving Party may
19 produce the Non-Party's confidential information responsive to the discovery request.
20 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
21 any information in its possession or control that is subject to the confidentiality
22 agreement with the Non-Party before a determination by the court. Absent a court order
23 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
24 in this court of its Protected Material.

26 ///

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
5 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
6 all unauthorized copies of the Protected Material, (c) inform the person or persons to
7 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
8 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"
9 that is attached hereto as Exhibit A.
10

11
12
13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL
15

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection,
18 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
20 may be established in an e-discovery order that provides for production without prior
21 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
22 parties reach an agreement on the effect of disclosure of a communication or
23 information covered by the attorney-client privilege or work product protection, the
24 parties may incorporate their agreement in the stipulated protective order submitted to
25 the court.
26
27
28

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3
4 person to seek its modification by the Court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this
6
7 Protective Order no Party waives any right it otherwise would have to object to
8
9 disclosing or producing any information or item on any ground not addressed in this
10
11 Stipulated Protective Order. Similarly, no Party waives any right to object on any
12
13 ground to use in evidence of any of the material covered by this Protective Order.

14 12.3 Filing Protected Material. A Party that seeks to file under seal any
15
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
17
18 only be filed under seal pursuant to a court order authorizing the sealing of the specific
19
20 Protected Material at issue. If a Party's request to file Protected Material under seal is
21
22 denied by the court, then the Receiving Party may file the information in the public
23
24 record unless otherwise instructed by the court.

25 13. FINAL DISPOSITION

26 After the final disposition of this Action, as defined in paragraph 4, within 60
27
28 days of a written request by the Designating Party, each Receiving Party must return all
29
30 Protected Material to the Producing Party or destroy such material. As used in this
31
32 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
33
34 summaries, and any other format reproducing or capturing any of the Protected
35
36 Material. Whether the Protected Material is returned or destroyed, the Receiving Party

1 must submit a written certification to the Producing Party (and, if not the same person
2 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
3 category, where appropriate) all the Protected Material that was returned or destroyed
4 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
5 compilations, summaries or any other format reproducing or capturing any of the
6 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
7 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
8 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
9 work product, and consultant and expert work product, even if such materials contain
10 Protected Material. Any such archival copies that contain or constitute Protected
11 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).
12
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14
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16 14. Any violation of this Order may be punished by any and all appropriate
17 measures including, without limitation, contempt proceedings and/or monetary
18 sanctions.
19

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21 DATED: August 6, 2019

22 
23 FREDERICK F. MUMM
24 United States Magistrate Judge
25
26
27
28

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued
by the United States District Court for the Central District of California on [date] in the
case of *Scott Carnes v. Southern Glazer's Wine and Spirits, LLC*, U.S. District Court
No. 2:19-cv-00255 MWF (FFMx). I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that failure
to so comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is
subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with this
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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